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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 SHAWN HAWK,

No. CIV S-04-0731-MCE-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 ALAMEIDA, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
18 to 42 U.S.C. § 1983. Pending before the court is plaintiff's third amended complaint (Doc. 21),
19 filed on December 30, 2005.

20 The court is required to screen complaints brought by prisoners seeking relief
21 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
22 § 1915A(a).

23 Plaintiff names the following as defendants: Alameida; Runnels; Cook;
24 Ingwerson; Howard; Perry; Swartz; Correa; and Chettam. Defendants Alameida and Runnels are
25 supervisory personnel. Plaintiff states that, on October 10, 2002, he was issued a "general
26 counseling chrono" indicating that he was not in compliance with the prison's grooming

1 regulations. Plaintiff claims that this “chrono” contained false information. The same day,
2 plaintiff filed an inmate grievance concerning the allegedly false information in the “chrono,”
3 and asked that the “chrono” be removed from his file because the grooming regulations violate
4 his religious beliefs. Plaintiff states that, on October 14, 2002, he spoke with defendant Cook
5 regarding the “chrono.” Plaintiff states that, during this conversation, he informed defendant
6 Cook about a court injunction entered in favor of prisoners at California State Prison, Solano,
7 which forbids enforcement of the grooming regulations. Plaintiff claims that defendant Cook
8 stated that no change in policy would be considered until and unless an injunction was issued in
9 favor of inmates at plaintiff’s institution (High Desert State Prison).

10 Plaintiff claims that, on October 16, 2002, he was charged with a rules violation
11 based on non-compliance with the grooming standards. Plaintiff reported to the “program
12 office” on October 26, 2002, for a hearing on the rules violation. When asked for reasons why
13 he refused to comply with the grooming regulations, plaintiff stated the following: (1) he has a
14 sincere belief, founded in Native American religious practices, barring him from cutting his hair
15 unless a relative dies; (2) grooming tools supplied to prisoners are causing injuries, including
16 drawing blood, which exposes inmates to blood-borne pathogens; (3) prison barbers were not
17 adequately trained in blood-borne pathogens and how to prevent infection; (4) the injunction
18 issued in favor of prisoners at the California State Prison, Solano, barred enforcement of the
19 grooming regulations; (5) the grooming regulations were not being applied equally among
20 prisoners; and (6) the prison has an obligation to protect inmates from blood-borne pathogens
21 and to allow for religious freedom. Plaintiff states that he was found “not guilty” of the rules
22 violation, which was dismissed. Plaintiff indicates that defendant Cook approved this result.

23 Next, plaintiff claims that, on October 26, 2002, a fight broke out among white
24 and Asian inmates, which groups were subsequently placed on lock-down. Plaintiff states that,
25 even though he is a Native American, he was also placed on lock-down because his cellmate is
26 white. Plaintiff alleges that he was told by defendant Correa that, as long as he was housed with

1 a white inmate, he would also be subject to the lock-down. Plaintiff states that defendant Correa
2 told him that this directive came from defendants Perry, Cook, and Runnels. Plaintiff alleges
3 that he learned from another Native American inmate that, in fact, plaintiff was being singled out
4 because he refused to comply with the grooming regulations. Plaintiff asserts that this other
5 inmate also observed that other Native American inmates housed with white inmates were not on
6 lock-down, and that only plaintiff was being treated differently. Plaintiff states that he filed an
7 inmate grievance concerning his lock-down, but that prison officials never responded.

8 Plaintiff alleges that, on October 29, 2002, defendant Swartz issued another rules
9 violation report against plaintiff based on the grooming regulations. Plaintiff claims that, as with
10 the prior rules violation report, this one was also based on false information. A hearing on the
11 rules violation was conducted by defendant Howard on November 10, 2002. Plaintiff states that
12 the prison staff assigned to assist him with the hearing failed to obtain necessary documents that
13 plaintiff had requested. Plaintiff also states that the witnesses he had requested were not present
14 at the hearing. After providing defendant Howard with the same responses he gave at the prior
15 rules violation hearing, defendant Howard found plaintiff guilty of the rules violation. Plaintiff
16 was punished by having his recreational time taken away.

17 Plaintiff claims that, on November 11, 2002, he was called to a meeting with
18 defendants Swartz and Chettam about plaintiff's refusal to comply with the grooming
19 regulations. Plaintiff continued to refuse to comply with the grooming regulations and plaintiff
20 was charged with yet another rules violation based on his refusal to cut his hair. Plaintiff states
21 that, on January 3, 2003, the rules violation was re-heard by defendant Ingwerson. Plaintiff
22 states that he was permitted for the first time to call witnesses and present evidence, though
23 plaintiff claims that he was not allowed to present evidence concerning ineffectiveness of
24 disinfectants used on barber equipment. Plaintiff claims that he was again found guilty of a rules
25 violation and that he lost 30 days good-time credits and was denied yard time for 30 days as a
26 result.

1 As to defendant Alameida, plaintiff claims that he informed him of the foregoing
2 in the form in inmate appeal, but that defendant Alameida did nothing.

3 Plaintiff seeks a determination that the grooming regulations are unconstitutional,
4 and an injunction barring enforcement of the grooming regulations. Plaintiff also seeks
5 compensatory and punitive damages.

6 The third amended complaint appears to state a cognizable claim for relief
7 pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations are proven, plaintiff
8 has a reasonable opportunity to prevail on the merits of this action. The court, therefore, finds
9 that service is appropriate and will direct service by the U.S. Marshal without pre-payment of
10 costs. Plaintiff is informed, however, that this action cannot proceed further until plaintiff
11 complies with this order. Plaintiff is warned that failure to comply with this order may result in
12 dismissal of the action. See Local Rule 11-110.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Service is appropriate for the following defendant(s):

15 ALAMEIDA;

16 RUNNELS;

17 COOK;

18 INGWERSON;

19 HOWARD;

20 PERRY;


21 SWARTZ;

22 CORREA; and

23 CHETTAM;

24 2. The Clerk of the Court shall send plaintiff one USM-285 form for each
25 defendant identified above, one summons, an instruction sheet, and a copy of the third amended
26 complaint filed December 30, 2005; and

- a. The completed Notice of Submission of Documents;
- b. One completed summons;
- c. Nine completed USM-285 form(s); and
- d. Ten copies of the endorsed third amended complaint filed December 30, 2005.


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

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11 _____/
12 NOTICE OF SUBMISSION OF DOCUMENTS

13 Plaintiff hereby submits the following documents in compliance with the court's
14 order:

15 1 completed summons form;
16 _____ completed USM-285 form(s); and
17 _____ copies of the third amended complaint filed on December 30,
18 2005.

19 DATED: _____

20 _____
21 Plaintiff
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